

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**CELLULAR SOUTH, INC. d/b/a
C SPIRE WIRELESS**

Plaintiff,

v.

**DIGITAS, INC. and
VNC COMMUNICATIONS, INC.,
d/b/a PHONEVALLEY**

Defendants.

Case No. 3:13-CV-00308-TSL-JMR

DEFENDANTS' MOTION TO DISMISS

Defendants Digitas, Inc. ("Digitas") and VNC Communications, Inc., d/b/a Phonevalley ("Phonevalley") (collectively "Defendants"), by and through their undersigned counsel, and pursuant to Fed. R. Civ. P. 12(b)(1), (3), and (6), hereby move to dismiss Plaintiff's Complaint.

1. This lawsuit involves contracts between Cellular South, Inc. d/b/a C Spire Wireless ("C Spire") and Defendants for the analysis and development of C Spire's third-party mobile advertising platform. The engagement consisted of three distinct phases, each of which had its own payment provision to compensate Defendants for their work at the end of each phase. Defendants completed all contracted work for C Spire on Phases 1 and 2 and C Spire accepted the work without issue. Nevertheless, C Spire has not paid \$100,000 to Defendants under the contracts for their work in Phase 2. Further, C Spire prevented a collaborative effort between the parties in generating advertising revenue in Phase 3, thereby precluding Defendants from being paid for their Phase 3 work under the parties' contract. Despite its several material breaches of the contract, C Spire now claims that it—rather than Defendants—is the victim,

alleging that Defendants failed to provide C Spire with \$500,000 in advertising revenue that was neither contractually obligated nor guaranteed.

2. C Spire's Complaint must fail because: (1) this Court lacks subject matter jurisdiction and the Complaint was filed in the wrong venue given a mandatory arbitration provision contained in a Media Services Agreement governing the parties' relationship and ensuing Statements of Work in this matter; and (2) each of C Spire's claims is insufficiently pled and otherwise barred as a matter of law under Federal Rule of Civil Procedure 12(b)(6).

3. For the reasons articulated in Defendants' contemporaneously-filed Memorandum in Support (filed under seal), which is incorporated herein by reference, the case should be dismissed against Defendants for lack of subject matter jurisdiction, improper venue and failure to state any claims upon which relief may be granted.

4. In further support of this Motion, Defendants submit the following Exhibits:

Exhibit A May 30, 2012, Statement of Work ("SOW") between C Spire and Phonevalley;

Exhibit B December 21, 2012, Addendum to Original SOW ("Addendum") between C Spire and Phonevalley;

Exhibit C C Spire's Complaint against Defendants, filed May 20, 2013, in the District Court for the Southern District of Mississippi, Jackson Division;

Exhibit D June 24, 2010, Media Services Agreement between Spark Communications (C Spire's advertising agency of record and Publicis sister agency to Defendants) and Cellular South, Inc. d/b/a C Spire (filed under seal); and

Exhibit E August 30, 2013, Notice of Intent to Arbitrate in Chicago, Illinois (filed under seal).

5. Defendants' counsel has consulted with Plaintiff's counsel and Plaintiff opposes this motion.

WHEREFORE, PREMISES CONSIDERED, Defendants, Digitas, Inc. and VNC Communications, Inc., d/b/a Phonevalley, respectfully request an Order dismissing this lawsuit for lack of subject matter jurisdiction, improper venue and for failure to state a claim, with all costs taxed against Plaintiff.

Dated: September 3, 2013

Respectfully submitted,

DIGITAS, INC. and VNC
COMMUNICATIONS, INC., d/b/a
PHONEVALLEY

By: /s/ Michael Dockterman
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CERTIFICATE OF SERVICE

I, MICHAEL DOCKTERMAN, do hereby certify that I have this day filed a copy of the foregoing document with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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THIS, the 3rd day of September, 2013.

/s/ Michael Dockterman
MICHAEL DOCKTERMAN